



Arnold Schwarzenegger, Governor  
State of California  
Business, Transportation and Housing Agency

**Department of Managed Health Care**  
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November 20, 2007

**DELIVERED VIA U.S. MAIL**

Mary V. Anderson  
Western Regional General Counsel  
Aetna U.S. Healthcare of California  
2625 Shadelands Drive  
Walnut Creek, CA 94598

**Re: Complaint No.: 307978  
Enforcement Matter No. 06-204**

**LETTER OF AGREEMENT**

Dear Ms. Anderson:

The Department of Managed Health Care (the Department) has concluded its investigation of Aetna U.S. Healthcare of California (the Plan) in the above referenced matter. The Department has determined that the Plan failed to comply with Health and Safety Code, sections 1368.1, subsections (a)(1)(2)(3), 1370.4, and 1374.34, subsection (b), when responding to the enrollee's request for services.

**Section 1368.1**

Section 1368.1 requires the Plan to provide certain information when denying coverage to an enrollee with a terminal illness. Section 1368.1 is applicable in this matter as the enrollee was diagnosed with a terminal illness. This section requires that the Plan state the specific reasons for the denial in its entirety (subsection (a)(1)); provide a description of alternative treatment, services, or supplies covered by the Plan (subsection (a)(2)); and offer a conference to the enrollee in the complaint form (subsection (a)(3)).

The Plan violated section 1368.1, subsection (a)(1) when it failed to state in the denial letters to the enrollee that the denial of coverage was based on the experimental or investigational nature of the service, thus not setting forth the specific reasons for the denial in its entirety. Due to a staff member's error in failing to recognize that this enrollee was diagnosed with a terminal illness, the Plan failed to provide a description of

alternative treatment, services, or supplies covered by the Plan, in violation of section 1368.1, subsection (a)(2). Although the Plan offered a conference to the enrollee via telephone, which according to the Plan the enrollee accepted, it did not make the offer in writing in its denial or complaint letter to the enrollee, therefore, the Plan is also in violation of section 1368.1, subsection (a)(3).

#### Section 1370.4

Section 1370.4 requires health plans to offer an Independent Medical Review (IMR) to enrollees who are denied benefits related to the medical necessity of the proposed service or treatment, the experimental or investigational nature of the treatment, or payment disputes for emergent or urgent medical services. The June 2, 2006, and June 21, 2006 denial letters to the enrollee failed to clearly set forth that the reason for the Plan's denial was due to the experimental or investigational nature of the clinical study, a type of denial that would trigger an IMR. The Plan disclosed this reason for the denial to the HMO Help Center after the enrollee filed his complaint with the Department. At this time the Plan also acknowledged that the matter was eligible for an IMR, although the denial letters, on their face, appeared to be coverage-based denials, which are not eligible for an IMR. Although the Plan included the standard IMR language in its denial letters which informs enrollees of the three types of denials that are eligible for an IMR, by failing to set forth that the denial was based on the experimental or investigational nature of the treatment, the Plan, in effect, did not offer an IMR to the enrollee. Thus, the Plan has violated section 1370.4.

#### Section 1374.34(b)

Section 1374.34(b) prohibits the Plan from engaging in any conduct that has the effect of prolonging the IMR process. The Plan initially purported in its denial letters to the enrollee that the denial was coverage-based. Coverage-based denials are not eligible for an IMR. The Plan then informed the Department during the Department's investigation that the denial was based on the experimental or investigational nature of the treatment, which would qualify the matter for an IMR. This response required the Department to further contact the Plan to reconcile the various reasons that were given by the Plan. The Plan's failure to initially set forth that the reason for the denial was experimental or investigational prolonged the IMR process, in violation of section 1374.34(b).

The Department, pursuant to its authority under Health and Safety Code, section 1386, subsections (a) and (b)(6), and based on the facts of this matter, has assessed an Administrative Penalty against the Plan for its violations of Health and Safety Code, sections 1368.1, subsections (a)(1)(2)(3), 1370.4, and 1374.34, subsection (b), in the amount of \$20,000 dollars, payable to the Department of Managed Health Care.

Mary V. Anderson  
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The Plan hereby acknowledges the Department's findings, but admits only to violation of Section 1368.1, and agrees to pay the fine. The Plan confirms that it has taken corrective action as to its violation of Section 1368.1 by re-training its staff to check a box which identifies enrollees having a terminal illness on the appropriate form. In the event the Department subsequently initiates disciplinary action for any related violation, this Letter of Agreement may be considered and used by the Department in any such disciplinary proceeding as an official record of the violations described herein.

Sincerely,

*Patricia Sundqvist*

*for* Amy Dobberteen  
Assistant Deputy Director  
Office of Enforcement

SRF:avb

Accepted by Aetna ~~U.S.~~ Healthcare of California, Inc.  
*mva*

DATE: 11-27-07

*Mary V. Anderson*

Mary V. Anderson  
Western Regional General Counsel  
Aetna ~~U.S.~~ Healthcare of California Inc.,  
*MVA*